

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 447 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes. : YES
2. To be referred to the Reporter or not? No. :
3. Whether Their Lordships wish to see the fair copy of the judgement? No. : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No. : NO
5. Whether it is to be circulated to the Civil Judge?No.:

ROHITBHAI BHIKHABHAI PATEL

Versus

P B THAKUR OR HIS SUCCESOR IN OFFICE ENFFORCEMENT DIRECTOR

Appearance:

MR NM KAPADIA for Petitioner

MS PJ DAVAWALA for Respondent No. 1

MR BY MANKAD APP for the State.

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 10/09/1999

ORAL JUDGEMENT

1. Rule. Ms. Davawala appears and waives service for respondent No. 1 and Mr. B.Y. Mankad learned APP appears and waives service of Rule for respondent No. 2 State. With the consent of learned counsel appearing for the parties, the matter is taken up for final hearing today.

2. Heard learned Counsel Mr. N.M. Kapadia for the petitioner and Ms. Davavala for the respondent NO. 1. Mr. Mankad learned A.P.P. appeared for the respondent No. 2 - State of Gujarat who has supported the submissions made by the Central Government Counsel Ms. Davavala. The grievance of the petitioner is that he was wrongly arrested by the respondent NO. 1 and was produced before the Court under the immense pressure and threat. The officer of the respondent No.1's department got a confessional statement from the present petitioner but the same was retracted immediately thereafter. It is averred that on 25th July 1987, the petitioner's brother Maheshkumar Bhikhabhai Patel was arrested by respondent No. 1 and was produced before the learned Magistrate. The present petitioner was arrested in the Month of August, 1987. It is averred by the petitioner that on the statement from respondent No. 1, Criminal Proceedings were initiated against the brother of the petitioner Maheshkumar, which ultimately came to be dropped. The petitioner relies on the report submitted in the Court of Addl. Chief Metropolitan Magistrate, Ahmedabad dated. 4th August, 1987, wherein serious allegations were made and even the bail prayed by the petitioner was resisted. According to the petitioner, the enforcement directorate searched the house of the petitioner on 1st April, 1987 and they recovered Rs. 9,51,600/- during the Search and the amount was seized. The department had wanted to record the statement of the brother of the petitioner. When the petitioner was admitted in the hospital, the Officer of the Enforcement department visited the residence of the petitioner and his business premises and the officers also visited the Hospital at odd hours. According to the petitioner, under the immense pressure, alleged confessional statement was got recorded. After detailed inquiry one S.G. Tendulkar, Officer of Enforcement Directorate, disclosed certain facts before the Addl. Chief Metropolitan Magistrate, Ahmedabad, and has declared that it is not possible for the department to proceed any further in the case instituted against the Maheshkumar and therefore, the proceedings against Mr. Maheshkumar were dropped. The learned Addl. Chief Metropolitan Magistrate was told that the department, after careful scrutiny, is asked to apply accordingly and the officer who had appeared before the Court of the learned Addl. Chief Metropolitan Magistrate, had produced one letter dated 28th November, 1997 of the Office of the Dy. Directorate Enforcement, bearing No.T-9/Misc./Court/Legal/A/97/4772. The letter was tendered before the learned Magistrate vide Ex. 12 and considering the averments made in the letter vis-a-vis

the statement made before the learned Sessions Judge, he was pleased to drop the proceeding against Mr. Maheshkumar, the brother of the present petitioner.

3. The grievance of the present petitioner is that despite the fact that he was arrested in the year 1987, the department has not proceeded further and he is under hanging sword of serious Criminal Proceedings. The department is acting with utmost discrimination vis-a-vis his brother. The department ought to have declared before the learned Addl. Chief Metropolitan Magistrate that it dropped the proceeding initiated against the present petitioner also. Right of speedy trial is conferred to a citizen vide Article 21 of the Constitution of India and it clearly transpires that the grievance made by the present applicant is well founded. It is a clear case of discrimination. Even on the day of hearing, the learned counsel appearing for the respondent NO. 1 was not in a position to make a positive statement that the department intends to proceed with the present petitioner or they intend to proceed against the present petitioner even after the report was made with regard to his brother Maheshkumar. The petitioner has rightly raised up on down the ratio of the judgement in a case of Hussainara Khatoon and others Vs. Home Secretary, State of Bihar, Pathan, reported in AIR 1979 SC 1360. I would like to refer the relevant paragraph of the judgement, which as under :

....A procedure prescribed by law for depriving a person of his liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair or just" and it would fall foul of Art. 21. there can, therefore, be no doubt that speedy trial, and by speedy trial, we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Art. 21."

Case of Srinivas Pal Vs. Union Territory of Arunachal Pradesh, reported in AIR 1988 SC 1729, also helps to the case of the petitioner, though that case pertains to negligent driving but the ratio is important.

Another case of Mihirkumar Ghosh Vs. State of West Bengal and others, reported in 1990 Cri.L.J. 26 (Cal.) also helps the case of the present petitioner in which the Honourable Calcutta High Court has observed

that :

"...Speedy trial - "Sword of Damocles" should not hang over the head of accused for indefinite period - Prolongation of trial beyond 15 years from the date of offence - Violates constitutional right to speedy trial of a fair, just and reasonable procedure recognised under Art. 21."

It has further been observed that ;

"...Even a delay of one year in the commencement of the trial is bad enough ; how much worse could it be when the delay is as long as 3 to 5 or 7 or even 10 years. Speedy trial is the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. It is speedy trial which is one of the constitutionally guaranteed rights."

3. In nut-shell, without going to the other details, I find that there is ample force in the submissions made by the learned counsel Mr. Kapadia appearing for the petitioner and therefore, I hold that the proceedings against the present petitioner should be quashed.

In the result, the present Special Criminal Application is allowed. The proceeding pending against the present petitioner before the learned Add. Chief Metropolitan Magistrate, Ahmedabad in respect of F.NO.T-3/155/A/1987, are hereby quashed and set aside.

Rule made absolute accordingly. D.S. Permitted.

Sd/-

Date : 10/9/1999. (C.K. BUCH, J.)

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